ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.192 OF 1997

BETWEEN:

OSLEY BAPTISTE

Plaintiff

and

C K GREAVES & COMPANY LIMITED

Defendant

Appearances:
Arthur Williams for the Plaintiff
Samuel Commissiong for the Defendant

2001: May 5,14,21,31

JUDGMENT

[1] MITCHELL, J: This was an occupier's liability suit. It involved a customer at a supermarket who claimed that he slipped on the premises and suffered injury as a result. One issue for the court was whether the payment by the Defendant of the Plaintiff's medical and other bills shortly after the accident amounted to an admission of liability in negligence that was binding on the Defendant.

[2] By consent at the commencement of the trial, the only issue at the trial was liability. It was agreed that the question of damages if any was to come up on a summons for assessment of damages at a later stage.

[3] By a specially endorsed writ issued on 5 June 1997, the Plaintiff claimed that on 16 July 1994, while he was shopping at the Defendant's supermarket at Arnos Vale, he slipped in some meat water and fell; that as a result he received injuries

and suffered pain and loss; and, that this was caused by the negligence of the Defendant in failing to take steps to prevent meat water from being on the floor of the supermarket and from failing to warn the Plaintiff that the floor was wet and dangerous. As a result of a court order of 3 December 1999, the Plaintiff delivered Further and Better Particulars of the Statement of Claim. In particular, he claimed that he was only aware of the water when he got up from the floor and saw that there was bloody and slimy water running from the freezer of meat and other cold stuff. By a Defence filed on 30 July 1997, the Defendant denied that the floor was wet or dangerous or that the Plaintiff suffered any injuries. The Request for Hearing was filed on 20 January 2000 and the case has been ready for trial ever since.

[4] A major part of the cross examination of the Plaintiff was directed to questioning whether he had ever slipped and fallen on the day in question. A great deal of evidence was given by the Defendant as to the impossibility of any water having leaked from the freezer in question and causing the Plaintiff to slip. The Defendant called witnesses to testify that the freezers had been properly maintained, that the floor was regularly mopped and cleaned, that no water as alleged was on the floor by the freezer in question, and that the Plaintiff had never made any complaint to the staff of the Defendant. Indeed, a member of staff whom the Plaintiff had testified had been assisting him at the time of the alleged fall came to testify that the Plaintiff had never slipped and fallen at all. The manager of the supermarket at the time of the incident gave evidence that the Plaintiff had never complained of a fall, though he had himself asked the Plaintiff about the report of a fall. The evidence which the court accepts is that the Plaintiff did make a compliant to the Defendant company immediately the alleged fall occurred. The Defendant sent the Plaintiff to see a local doctor, made the doctor's appointment for the Plaintiff, and paid the medical bill. The local doctor referred the Plaintiff to specialists in Trinidad. The Defendant gave the Plaintiff money to cover his travel and expenses in attending the specialists in Trinidad. These payments were made freely and promptly, and without any reservation or

qualification. Despite the treatment locally and in Trinidad, the Plaintiff could not find any relief from the pain he suffered as a consequence of the accident. He was referred to doctors in Canada to have further tests and treatment carried out. The Defendant thereupon ceased providing further funds to cover the Plaintiff's expenses. Meanwhile, shortly after the incident, the Defendant completely rebuilt the supermarket in question and disposed of the allegedly defective freezing equipment. The planning work for this rebuilding work was far advanced at the time of the incident, and the rebuilding was not related in any way to the incident.

[5] The Defendant refused to pay the Plaintiff's later medical bills, and the Plaintiff has had to sue. The Defendant urges the court to find that the Plaintiff has not proved his particulars of negligence. The question that arose for the court in this regard was, does the Plaintiff have to prove each and every particular of negligence alleged? Or, does the payment by the Defendant of the Plaintiff's initial medical and travel bills, shortly after the incident, when the circumstances were fresh in all their minds, amount to a legally binding acceptance of liability?

[6] The Plaintiff urged that such payment was an admission of liability. The Defendant submitted that the mere payment of monies to the Plaintiff did not amount to an admission of liability. The Defendant relied on a number of authorities, including:

Blundell v Rimmer (1971) 1 All ER 1072
Rankine v Garton Sons & Co Ltd (1979) 2 All ER 1185
JR Munday Ltd v London County Council (1916-1917) All ER Rep 824

[7] In the Blundell case [supra] the money had been paid into court. The Defendant wrote to the Plaintiff notifying him of the payment into court. The letter clearly stated that the Defendant admitted negligence, but it was denied that the Defendant had suffered any damage. The Plaintiff obtained an interlocutory judgment on the admission of negligence and an order that a judge assess

damages. On an appeal to Payne J from the Registrar's interlocutory order it was held:

> No admission of fact had been made on which the Plaintiff was entitled to a judgment or order under RSC Ord 27, r3, for a cause of action for negligence had two elements, ie, negligence and damage suffered by the plaintiff, and until damage had been proved the plaintiff was not entitled to judgment on the admission of negligence only because no claim against the defendant had been established; but even if the court did have a discretion in such a case to give leave to sign interlocutory judgment, it would not be just to give leave on the meagre facts available in the present case. Accordingly, the order would be set aside and the appeal allowed.

In this case, if the Plaintiff is to be believed, the Defendant never questioned the damage alleged by the Plaintiff to have been caused to him until at the earliest the filing of the Defence in this case. The Defence was filed just short of 3 years after the date of the incident complained of. Prior to that time, if the Plaintiff is to be believed, the Defendant had accepted that the Plaintiff had received an injury that required medical attention. The Blundell case does not appear to be strictly applicable to our circumstances.

[8] The Rankine case [supra] involved an employee slipping on a pool of glucose in his employer's premises. He sued for negligence. The employer denied liability. The defendant's solicitors subsequently sent a letter to the plaintiff stating that the defendant now admitted responsibility and that when they received the medical report they hoped to settle the matter amicably. The plaintiff on the basis of the letter applied for an interlocutory judgment. The master made the order for leave to enter judgment and for damages to be assessed. The defendants appealed, contending that the order ought not to have been made because they had merely

admitted negligence and not that the plaintiff's injuries resulted from their negligence. On appeal to the Court of Appeal it was held:

> Where admissions of fact had been made by one party, the court was empowered under RSC Ord 27, r 3 to give the other party only 'such judgment or order as upon those admissions he may be entitled to.' Accordingly, in an action founded on negligence, a plaintiff was not entitled to judgment unless he could prove the two necessary components of his cause of action, ie, that the defendant had been negligent and that the plaintiff had suffered damage as a result of that negligence. An admission of negligence was not necessarily an admission of liability, and on the true construction of the pleadings and correspondence the defendants had not admitted that the plaintiff's injuries were caused by their negligence. It followed that, since the plaintiff could not show that both components of his cause of action had been admitted, he was not entitled to an order under RSC Ord 27, r 3.

In this case, the facts were different. If the Plaintiff is to be believed, in this case the Defendant initially accepted that it had been negligent and that the Plaintiff's injury had resulted from its negligence. The question that arises is can the Defendant, at a later stage, when the equipment and the premises that are being complained about have been replaced and rebuilt and the original can no longer be tested, repudiate its earlier acceptance and seek to put the Plaintiff to strict proof. The Rankine case is in this way distinguishable from this case.

[9] In the earlier case of JR Munday [supra], the defendant was sued by the plaintiffs for damages for an injury to a horse belonging to the plaintiffs caused by the negligence of the defendant's servants. The defendant paid a sum of money into court with a notice attached to the effect that the defendant admitted that the accident was caused through its negligence, but that it denied the alleged damage. In the Court of Appeal it was held, affirming the decision of the Divisional

Court, that the notice was not a sham, and was not wrong in form, since, although it admitted negligence, it put the plaintiffs to proof of damage. The reason why this case does not apply to our facts is obvious.

[10] A defendant who does not accept liability for an injury allegedly caused to another by some state of affairs on his premises, but, out of the goodness of his heart, wishes to help the injured person, is obliged to be particularly careful in tendering a sum of money to the potential claimant. The money must be tendered to the injured person on the clearest of understandings that the plaintiff does not accept liability for the cause or consequences of the injury. Additionally, the defendant must clearly confirm, in the presence of witnesses or in writing, that he accepts that the payment of the money does not amount to an admission of liability on the part of the defendant.

[11] If a defendant, shortly after a complaint by a plaintiff of the defendant's responsibility for an injury caused to the plaintiff by some defect in the premises of the defendant, unconditionally and unreservedly accepts responsibility for the medical and other expenses of the plaintiff, it is not open to the defendant subsequently to put the plaintiff to strict proof of all the circumstances which the plaintiff claims places the responsibility for the loss and damage on the defendant. The plaintiff would have been put to a disadvantage. He would have felt that he did not need to call for any examination of the allegedly defective equipment in question or otherwise take steps to collect all the necessary evidence to support any necessary subsequent litigation. Equity will intervene to estopp such a defendant from putting the plaintiff to strict proof of the circumstances which the plaintiff says amounted to negligence on the part of the defendant.

[12] The Defendant, in making the payments to the Plaintiff that it did, did not take any precaution to reserve its position on its liability in law for compensating the Plaintiff. I do not accept the story of the Defendant's witnesses that the Defendant had never accepted liability, but had only paid for the Plaintiff's medical treatment

in order to obtain the medical reports to protect the Defendant. The Defendant freely and voluntarily made an unqualified and unconditional acceptance of liability at the time when the facts were fresh in the minds of every one and when it believed that the injury was small and inexpensive, but attempted to repudiate liability when it realised that the Plaintiff's injuries would not be so easily cured and after the equipment and floor in question had been altered. I have no hesitation in finding that such unqualified payment of the Plaintiff's medical and other expenses immediately after the accident as occurred in this case amounted to evidence of a freely given and legally binding acceptance of liability by the Defendant for the injury to the Plaintiff. On the basis alone of the initial unqualified payment of the medical and travel expenses of the Plaintiff arising out of the fall on the premises of the Defendant in this case, I am prepared to find the Defendant accepted full legally responsible for the loss and damage arising from the accident.

[13] Even if the Defendant were not estopped from denying liability, I would on the evidence have had no difficulty in finding the Defendant liable. The Defendant's immediate acceptance of responsibility for the fall and its consequent injury to the Plaintiff in accepting liability for the medical and travel bills of the Plaintiff is convincing evidence of the truthfulness of the Plaintiff's account of the circumstances giving rise to his injury. I do not accept the subsequent testimony of the witnesses of the Defendant that there was no water leaking from a freezer onto the supermarket floor on the afternoon in question. I do not accept that the Plaintiff did not fall and did not injure himself. I do not accept the story of the Defendant that the company had only paid the medical and travel expenses of the Plaintiff in order to obtain the medical reports in order to protect itself. The Plaintiff struck me as a plain and honest person who had clearly suffered the injury of which he complained. That incident had occurred in the presence of the staff of the Defendant, and had been reported to the Defendant at the time and as the Plaintiff described.

[14] There will be judgment for the Plaintiff for damages to be assessed and his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge